

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

IMPLICIT, LLC,

Plaintiff,

v.

NETSCOUT SYTEMS, INC.,

Defendant.

§
§
§
§
§
§
§
§
§
§

**Civil Action No. 2:18-cv-53-JRG
LEAD CASE**

JURY TRIAL DEMANDED

JOINT MOTION TO AMEND DOCKET CONTROL ORDER (DKT. 36)

COME NOW JOINTLY Plaintiff Implicit, LLC (“Implicit”) and Defendants NetScout Systems, Inc. (“NetScout”) and Sandvine Corporation (“Sandvine”) and respectfully move to amend the Court’s Docket Control Order dated July 19, 2018 (Dkt. 36). In support thereof, the parties would respectfully show the Court as follows:

The parties seek a First Amended Docket Control Order amending the deadlines to serve supplemental infringement contentions and supplemental invalidity contentions and to comply with P.R. 4-1, 4-2, 4-3, and 4-4. The requested amendments do not affect any other deadlines, including any hearing deadlines. The parties request these schedule modifications not for purposes of delay but to allow further time for the parties to evaluate their positions and so that justice may be served. The current schedule, which sets the claim construction hearing for March 27, 2019, provides ample time to accommodate the requested modifications.

The proposed modifications are detailed in the following chart:

Event	Old Deadline	New Deadline
Implicit to serve Supplemental Infringement Contentions as to NetScout and Sandvine	October 30, 2018	November 28, 2018
NetScout and Sandvine to serve Supplemental Invalidity Contentions		January 25, 2019
Comply with P.R. 4-1 (Exchange Proposed Claim Terms)	November 19, 2018	December 13, 2018
Comply with P.R. 4-2 (Exchange Preliminary Claim Constructions)	December 12, 2019	January 18, 2019
Comply with P.R. 4-3 (Joint Claim Construction Statement)	January 9, 2019	January 25, 2019
Comply with P.R. 4-4 (Deadline to Complete Claim Construction Discovery)	January 30, 2019	February 7, 2019

WHEREFORE, PREMISES CONSIDERED, Implicit, NetScout, and Sandvine respectfully pray that the Court enter the attached First Amended Docket Control Order, and for all other relief to which they are justly entitled.

Dated: November 1, 2018

By: /s/ Mark C. Lang
Abran J. Kean (CO Bar 44660)
ERISE IP, P.A.
5600 Greenwood Plaza Blvd., Suite 200
Greenwood Village, CO 80111
Telephone: (913) 777-5600

Eric A. Buresh (KS Bar 19895)
Mark C. Lang (KS Bar 26185)
ERISE IP, P.A.
7015 College Blvd., Suite 700
Overland Park, Kansas 66211
Telephone: (913) 777-5600
Facsimile: (913) 777-5601
eric.buresh@eriseip.com
abran.kean@eriseip.com
mark.lang@eriseip.com

Melissa Smith
Texas State Bar No. 24001351
melissa@gillamsmithlaw.com
GILLAM & SMITH, L.L.P.
303 South Washington Avenue
Marshall, Texas 75670
Telephone: 903-934-8450
Facsimile: 903-934-9257

***Counsel for Defendant
NetScout Systems, Inc.***

By: /s/ Mark C. Lang
Abran J. Kean
State Bar No. 44660
Email: abran.kean@eriseip.com
ERISE IP, P.A.
5600 Greenwood Plaza Blvd., Suite 200
Greenwood Village, Colorado 80111
Telephone: (913) 777-5600
Facsimile: (913) 777-5601

Eric A. Buresh
KS Bar No. 19895
Email: eric.buresh@eriseip.com
Mark C. Lang

Respectfully submitted,

By: /s/ William E. Davis, III
William E. Davis, III
Texas State Bar No. 24047416
bdavis@bdavisfirm.com
Christian J. Hurt
Texas State Bar No. 24059987
churt@bdavisfirm.com
Edward Chin (Of Counsel)
Texas State Bar No. 50511688
echin@bdavisfirm.com
Debra Coleman (Of Counsel)
Texas State Bar No. 24059595
dcoleman@bdavisfirm.com
The Davis Firm, PC
213 N. Fredonia Street, Suite 230
Longview, Texas 75601
Telephone: (903) 230-9090
Facsimile: (903) 230-9661

***Counsel for Plaintiff
Implicit, LLC***

KS Bar No. 26185
Email: mark.lang@eriseip.com
ERISE IP, P.A.
7015 College Blvd., Suite 700
Overland Park, Kansas 66211
Telephone: (913) 777-5600
Facsimile: (913) 777-5601

Melissa Richards Smith
Texas State Bar No. 24001351
Email: melissa@gillamsmithlaw.com
GILLAM & SMITH, LLP
303 South Washington Avenue
Marshall, Texas 75670
Telephone: (903) 934-8450
Facsimile: (903) 934-9257

*Counsel for Defendant
Sandvine Corporation*

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document is being filed electronically in compliance with Local Rule CV-5(a). As such, this document is being served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(V). Pursuant to Federal Rule of Civil Procedure 5(d) and Local Rule CV-5(d) and (e), any counsel of record not deemed to have consented to electronic service will be served with a true and correct copy of the foregoing by email on this November 1, 2018.

/s/ William E. Davis, III
William E. Davis, III